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No. 523

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

HENRY S. MORGAN, ET AL., *Petitioners*

v.

STEWART L. UDALL, Secretary of the Interior, FLOYD A. WALLIS, ET AL., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT FLOYD A. WALLIS IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. 13-16) is reported at 306 F. 2d 799. The findings of fact and conclusions of law of the district court are found at R. 748-752.[1]

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[1] "R." refers to the printed joint appendix in the court of appeals.

JURISDICTION

The court of appeals entered judgment on July 5, 1962, and denied a timely petition for rehearing on September 12, 1962. The petition for a writ of certiorari was filed on October 15, 1962. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the decision of the Secretary of the Interior was arbitrary, unreasonable, or otherwise not in accordance with law when it held that the lands leased to respondent Wallis were public lands of the United States leasable under the Mineral Leasing Act of 1920, rather than acquired lands leasable under the Mineral Leasing Act for Acquired Lands.[2]

STATEMENT

Respondent Wallis adopts as his Statement the first five paragraphs of the memorandum for Stewart L. Udall, Secretary of the Interior, in opposition.

ARGUMENT

As the court of appeals said (Pet. 15), the Secretary's decision is subject to judicial review only "if it can be shown that he has acted arbitrarily or unreasonably or that his interpretation of what constitutes 'public lands' is erroneous as a matter of law." *Chapman* v. *Sheridan Wyoming Co.*, 338 U. S. 621, 631

[2] For our purposes, public land may be defined as land the title to which has been acquired by the United States in the extension of its sovereignty, in our case in the purchase of Louisiana from France; acquired land as land once in private ownership and then acquired by the United States. Cf. *Justheim* v. *McKay*, 123 F. Supp. 560 (D.C. D.C., 1954), aff'd 229 F. 2d 29 (C.A. D.C., 1956).

(1950); *McLennan* v. *Wilbur*, 283 U. S. 414 (1931); *Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316, 324 (1903); *California Company* v. *Udall*, 296 F. 2d 384 (C.A. D.C., 1961). Tested by this established rule, the court of appeals and the district court properly held that the Secretary's decision should not be disturbed.

The only aspect of the Secretary's decision to which the petition is addressed is his conclusion that the land involved is public land leasable under the Mineral Leasing Act of 1920, 41 Stat. 437, as amended (30 U. S. C. Sec. 181 et seq.) and not acquired land leasable under the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913; 30 U. S. C. Secs. 351 et seq.). The amended complaint contains no allegation that the Secretary's decision in this respect is arbitrary, unreasonable, or even wrong or objectionable on any ground (R. 9). Moreover, none of the facts upon which the Secretary's decision is based have ever been denied by the petitioners, in the amended complaint or otherwise.

Even though the land concededly has always been public land and has never been conveyed by the United States, petitioners argue that it became "acquired land" within the meaning of the Mineral Leasing Act for Acquired Lands *merely* because the land to which it accreted was erroneously "purchased" and was for a time erroneously "treated" as "acquired" land by officials of the United States. (Pet. 8-11.)

(1) The Mineral Leasing Act for Acquired Lands simply provides in section 2 (61 Stat. 913; 30 U.S.C. 351) that " 'Acquired Lands' or 'lands acquired by the United States' include all lands heretofore or hereafter acquired by the United States to which the 'mineral leasing laws' have not been extended * * *." And

"mineral leasing laws" are defined as including the one covering public lands, the Mineral Leasing Act of February 25, 1920, as amended (41 Stat. 437; 60 Stat. 950; 30 U.S.C. 181 *et seq.*) There is nothing in that or any other language or in the legislative history of the Mineral Leasing Act for Acquired Lands, and the petitioners cite none, which evidences an intent to regard public lands never disposed of by the United States as acquired lands merely because of erroneous actions of officials of the United States based on the assumption that they were privately owned. It is inconceivable that merely because of a transaction by which the United States actually acquired nothing, public lands should thereafter be regarded as having been acquired for any purpose or that Congress should have so intended in the absence of an explicit direction.

On the contrary, to issue an oil and gas lease of public land under the Acquired Lands Act would violate the clear and explicit provisions of the Mineral Leasing Act of February 25, 1920, as amended, and the Acquired Lands Act. For the Mineral Leasing Act covers only public land[3] and requires that oil and gas deposits therein "shall be subject to disposition in the form and manner" therein provided. (30 U.S.C. 181.) Like all other public land in Louisiana, the land here involved was acquired by the United States in the purchase of Louisiana from France. Being thus concededly public land, never disposed of by the United States, it is land to which the 1920 Act *has* been extended. And the Acquired Lands Act by its own definition covers only "lands heretofore or hereafter acquired by the United

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[3] 40 *Opp. Atty. Gen.* 9 (1941); 34 *Op. Atty. Gen.* 171 (1924); *Solicitor's Opinion on Mineral Leasing Act*, 60 I.D. 26, 27 (1947); *Justheim* v. *McKay*, 229 F. 2d 29 (C.A. D.C., 1956).

States to which the 'mineral leasing laws' [the 1920 act] *have not* been extended * * *."

There is no conceivable basis for the assertion that leasing "depends upon how jurisdiction was obtained and long standing administrative use." (Pet. 11.) Congress chose not to define the land covered by the Mineral Leasing Act for Acquired Lands in any such terms and its choice is controlling. The discussion of conditions to leasing requested by the Secretary of the Army and of his consent (Pet. 8, 10, 11) is similarly pointless if the land is public and not acquired, since Congress has provided for such conditions and consent only if the lands are acquired and leasable under the Mineral Leasing Act for Acquired Lands. Moreover, by designating the Secretary of the Interior to administer both the Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands, Congress necessarily delegated to him the responsibility for determining which of the two statutes covers the land for which a lease is sought. *Haley* v. *Seaton*, 281 F. 2d 620 (C.A. D.C., 1960); *Justheim* v. *McKay*, 123 F. Supp. 560, affirmed 229 F. 2d 29 (C.A. D.C., 1956).

(2) The petitioners' argument is analogous to the one rejected in *U.S.* v. *California*, 332 U.S. 19, 39, 40 (1947), the companion case to *U.S.* v. *Louisiana*, 339 U.S. 699 (1950). In *California*, title to the submerged coastal lands was held to be in the United States, even though action had been taken, as the court said, "undoubtedly consistent with the belief * * * on the part of some government agents at the time that California owned all, or at least a part of the three-mile belt. This belief was indicated in the substantial number of instances in which the Government acquired title from the states to lands located in the belt; some decisions of

the Department of the Interior have denied applications for Federal oil and gas leases in the California coastal belt on the ground that California owned the lands." (332 U.S. 39, 40.) Accord, *United States* v. *San Fransisco*, 310 U.S. 16, 31-32 (1940); *Utah Power & L. Co.* v. *United States*, 243 U.S. 389, 408, 409 (1917).

(3) The Attorney Generals who approved the "acquisition" of, and commenced condemnation proceedings concerning the Jurgens land (Pet. 8, fn. 8; 9; 10, fn. 10) were overruled by the later Attorney Generals who prosecuted *U. S.* v. *Louisiana* and by this Court which upheld their position in that case in 1950 (339 U. S. 699). The Secretary followed, as he was bound to follow, the decision of this Court in that case.

(4) Contrary to petitioners' statements (Pet. 7, 9), the Director, the Secretary, the district court and the court of appeals did consider and dispose of the Jurgens argument.

Whatever claim to title Jurgens had was based on conveyances to him from Louisiana. And Louisiana's claim to title rested entirely on its own law. The U.S. Attorney in his letter of January 13, 1904 to the Attorney General stated (R. 516): "The lands in question [the Jurgens land] have all been formed by accretion from the sea, and under the law of Louisiana all such accretions belong to the State." The Director expressly held that there was no proper basis for any such claim by the State and took into account the Jurgens purchase in his decision of June 7, 1956 (R. 245, 248, 268.) The Director referred in detail to the three patents from Louisiana to Jurgens and to the deed from Jurgens to the United States (R. 268), and expressly disposed of the Jurgens argument as is

clearly shown from the portions of his decision quoted below.[4]

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[4] "Accretions to * * * [the Jurgens land] are directly involved in the instant case. * * * Louisiana has claimed these and other lands and the soils beneath the marginal sea by virtue of her inherent sovereignty theory of title to the bed of the Gulf of Mexico. * * * since *United States* v. *Louisiana*, 339 U.S. 669 (1949) [1950], the only interpretation that can be given thereto is that this case does not admit of an inherent sovereign ownership of water bottoms other than inland water bottoms * * *. (R. 268, 269.)

Earlier in the same decision, the Director referred to the purchase from "a Louisiana patentee", obviously meaning Jurgens, and continued:

> "* * * the United States was the original proprietor of all lands within Louisiana by purchase from France; since *United States* v. *Louisiana*, 339 U.S. 699 (1949) [1950] decided that Louisiana did not own the bed of the marginal sea, the United States is the original proprietor of that bed. No State by legislative fiat can decree title out of the United States and declare title in herself. * * * *Absent a grant of the public lands from the United States.* * * * title has always been in the United States. Since Louisiana is a public land State, all lands therein still possessed by the United States as original proprietor are public lands * * *; the only method by which any land in a public land State, such as Louisiana, can become acquired lands is for the United States *first to completely divest itself of title to the public lands*, and later purchase the same land from private or State ownership." (R. 248, 249.)

At another point the decision continued on the same subject:

> "* * * having decided that title to all lands formed from the bed of the marginal sea in the Gulf of Mexico subsequently to 1850 was *at all times* in the United States, including accretions thereto, the conclusion is inevitable that these subsequently formed lands are 'public lands' of the United States * * *. It is axiomatic then that any lands *not conveyed by the United States* remained property of the United States as public lands; they are subject to leasing under the Mineral Leasing Act of February 25, 1920, *supra*, as amended. * * * there are no lands involved herein which are considered acquired lands." (R. 272, 273.) (Emphasis throughout this brief is supplied unless otherwise indicated.)

The Secretary agreed with the Director that the lands involved are leasable under the Mineral Leasing Act of 1920, as amended, and not under the Mineral Leasing Act for Acquired Lands and affirmed his decision (R. 602, 605, 606, 615). In doing so, he stated in part: "Thus there are now three parties before the Secretary each of whom is asserting the priority of his public land or acquired land offer. Not one of the applicants has taken a definitive position on whether the lands applied for are of the one type or the other and each is apparently willing to accept a lease under either statute.[5] Furthermore, the Director in an exhaustive and carefully reasoned decision has determined that the lands involved are leasable only as public lands." (R. 605, 606.)

The District Court made findings on "the basis of the administrative record before the Secretary." (Finding 5, R. 752.) That record of course includes the Jurgens documents to which petitioners allude. (R. 465-519). The court of appeals ruled on all of petitioners' arguments, including the one based on those documents, in stating among other things: "In light of the record, we have considered the claims advanced by the appellants and have discerned no adequate basis upon which that determination [the Secretary's decision] may be disturbed." (Pet. App. 16.) And earlier in its opinion, the court of appeals stated: "The Director of the Bureau of Land Management concluded that the lands in question were not and could not have been at any time 'acquired lands,' for the United States had never

[5] Wallis, Morgan and Strom all filed both public and acquired land offers. Hence, there is no significance in any reference to the lands as acquired lands by Wallis as an acquired land offeror. (Pet. 5, fn. 6; 9, fn. 9.)

previously divested itself of title to the lands in issue, only thereafter to re-acquire them. Accordingly he ruled that the law and regulations pertaining to *public* lands must control. * * * The Secretary affirmed the challenged decision of the Director." (Pet. App. 14.) It necessarily follows from the undisputed failure of the United States so to divest itself of title, that the reasons claimed by petitioners to require the land to be leased as "acquired" (Pets. 8, 9) are wholly meaningless.

The Secretary's decision that the land involved is public land, leasable under the Mineral Leasing Act of 1920, was not arbitrary, unreasonable, or erroneous as a matter of law. The courts below were clearly right in refusing to disturb his decision. Nothing in the petition or otherwise justifies further review.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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